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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 IN RE:

8 LITHIUM ION BATTERIES ANTITRUST
9 LITIGATION

10 Case No. [13-md-02420-YGR](#) (DMR)

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12 **ORDER ON JOINT DISCOVERY
LETTER**

13 Re: Dkt. No. 677

14 Plaintiffs and Defendant Toshiba Corporation (“Toshiba”) filed a joint letter brief on
15 March 11, 2015 regarding a dispute about Toshiba’s production of worldwide transaction-level
16 sales data for lithium ion battery cells and packs. [Docket No. 677 (Joint Letter).] The court finds
17 that this matter is appropriate for resolution without oral argument pursuant to Civil Local Rule 7-
1(b).

18 **I. Background**

19 On November 14, 2014, the court issued an order regarding discovery. Among other
20 things, it ordered Defendants to immediately begin producing transactional data regarding sales of
21 lithium ion battery cells and packs (“transaction-level sales data”) on a rolling basis, and set
22 February 27, 2015 as the deadline for the completion of the production of such data. [Docket No.
23 555.] It also set a briefing and hearing schedule for disputes about three categories of information.
24 The joint discovery letter on any dispute regarding the geographic scope of transaction-level sales
data was due by December 2, 2014.

25 On December 2, 2014, Plaintiffs and Defendant groups Panasonic, Sanyo, Sony, NEC, and
26 GS Yuasa (the “objecting Defendants”) submitted a joint letter setting forth their dispute regarding
27 the production of worldwide transaction-level sales data. [Docket No. 590 (Dec. 2, 2014 Letter).]
28 The parties’ dispute centered around those Defendants’ objections to the production of such data

1 on the bases of relevance and burden. In the letter, Plaintiffs represented that
2 Defendants/Defendant groups Samsung, LG Chem, Hitachi Maxell, and Toshiba Corp. (the “non-
3 objecting Defendants”) had agreed to produce worldwide transaction-level sales data. (Dec. 2,
4 2014 Letter 1.) In a supplemental statement filed on December 16, 2014, the parties set forth the
5 following agreement between Plaintiffs and Toshiba:

6 Toshiba Corp. will produce its worldwide transaction-level sales and
7 cost data for lithium ion battery cells and packs for the period 1997
8 to 2007, at which time Toshiba Corp. stopped delivering those
9 products. Toshiba Corp. also will produce United States
10 transaction-level sales and cost data for lithium ion battery cells and
11 packs from its United States affiliate, Toshiba America Electronic
12 Components, Inc. (“TAEC”), for the period 1997 to 2004, at which
13 time TAEC stopped selling those products. The sales databases for
14 Toshiba Corp. and TAEC also contain certain cost data for lithium
15 ion battery cells and packs, which Toshiba Corp. will produce.

**Toshiba Corp. has not placed geographic restrictions on its
production of transactional sales data.** Toshiba Corp. will
provide Plaintiffs with information sufficient to show the meaning
of various codes and fields within the transactional data. Toshiba
Corp. expects to produce the majority of its data in December 2014
and to complete its production in January 2015.

16 [Docket No. 606 (Statement re Agreements) 2-3 (emphasis added).]

17 The court held a hearing on Plaintiffs’ worldwide data dispute with the objecting
18 Defendants on December 18, 2014. It issued an order on December 23, 2014 stating that the non-
19 objecting Defendants, including Toshiba, had “agreed to produce worldwide transaction-level (i.e.,
20 non-aggregated) data . . . where available.” [Docket No. 624 (Dec. 23, 2014 Order) 1 n.1.] As to
21 the worldwide data dispute, the court held that “data relating to sales to foreign companies of cells
22 and packs incorporated into finished products that were neither sold in the United States nor
23 destined for United States buyers” was irrelevant and stated that “[a]n Objecting Defendant need
24 not produce sales or cost data related to these ‘foreign finished products’ if the Objecting
25 Defendant can demonstrate that the data meets the court’s definition.” (Dec. 23, 2014 Order 2.) It
26 set a schedule for Plaintiffs and certain Objecting Defendants to complete the meet and confer
27 process by January 29, 2015 and to file any joint letter regarding outstanding disputes by February
9, 2015. (Dec. 23, 2014 Order 3-4.)

28 On February 27, 2015, the last day to complete production of transaction-level sales data,

1 Toshiba for the first time informed Plaintiffs that it was “not producing internal sales data
2 regarding [lithium ion batteries] used in finished products that were neither sold in the United
3 States nor destined for United States buyers.” (Joint Letter 1.) Plaintiffs now move to compel
4 Toshiba to produce this data.

5 **II. Discussion**

6 Toshiba has withheld “information regarding Toshiba’s internal sales of batteries where
7 the Toshiba-affiliated entity was located abroad and where the battery was not for use in a finished
8 product that was sold in the United States nor destined for United States buyers.” (Joint Letter 6.)
9 It argues that it need not produce “data that the Court had already determined to be irrelevant,” and
10 that the production of irrelevant information is an “inherently undue burden.” (Joint Letter 6-8.)
11 Toshiba asks the court to weigh the burden of producing the information against the need for the
12 information in the case.

13 Plaintiffs argue that Toshiba’s refusal to produce certain sales data violates its previous
14 agreement to produce data without any geographic restrictions and representations regarding the
15 same to the court, as well as the December 23, 2014 order placing the burden on the Objecting
16 Defendants to demonstrate that data met the court’s definition of “foreign finished products” in
17 order to withhold it from production. The court agrees. The court heard argument on the
18 Objecting Defendants’ relevance and burden objections at the December 18, 2014 hearing. At no
19 point during that hearing did Toshiba join the dispute, assert objections, or state that it would
20 withhold data contrary to its express representations to Plaintiffs and the court. The court
21 subsequently set a schedule for the parties to meet and confer and submit remaining disputes to the
22 court for resolution. Again, at no point did Toshiba seek to participate in that process. Toshiba
23 does not offer any justification for why it waited until the end of February to notify Plaintiffs of its
24 position, only stating that “the existence of irrelevant sales within Toshiba’s internal sales data
25 was something that had only come to light shortly before the production.” (Joint Letter 7.) Yet
26 Toshiba did not seek relief from the court. Instead, on the deadline by which all worldwide
27 transaction-level sales data was to be produced, Toshiba unilaterally declared that it would not
28 produce data that it had determined met the court’s definition of “foreign finished products.” The

1 court finds that Toshiba's objections to producing certain data on relevance and burden grounds
2 are untimely and are overruled.

3 **III. Conclusion**

4 An agreement is an agreement. Plaintiffs' motion to compel Toshiba to produce all of its
5 worldwide transaction-level sales data for lithium ion battery cells and packs is GRANTED.
6 Toshiba shall complete its production of such data in accordance with its December 16, 2014
7 representations within fourteen days of this order.

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9 IT IS SO ORDERED.

10 Dated: April 1, 2015

